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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 14th August, 1997:—

I

BILL NO. LI OF 1997

A Bill to provide for validation of disciplinary powers exercised by the Vice-Chairman and officers of the Delhi Development Authority.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Delhi Development Authority (Validation of Disciplinary Powers) Act, 1997.

Definitions.

2. In this Act,—

61 of 1957.

(*a*) "Authority" means the Delhi Development Authority established under section 3 of the Delhi Development Act, 1957;

(*b*) "Vice-Chairman" means the Vice-Chairman of the Authority.

Validation of disciplinary powers exercised or action taken by Vice-Chairman or other officers.

3. Notwithstanding any judgement, decree or order of any Court or Tribunal or other Authority to the contrary, where any disciplinary powers or action which the Central Government or the Authority may exercise or take under the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 had been exercised or taken by the Vice-Chairman or other officers of the Authority during the period on and from the 22nd day of November, 1979 to the 1st day of March, 1994, such disciplinary powers or action shall be deemed to have been validly and effectively exercised or taken by the Vice-Chairman or such other officer as if the Vice-Chairman or such other officer had been specified, with the previous approval of the Central Government in the said Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations in that behalf and accordingly, no suit or other proceeding shall be instituted, maintained or continued in any Court or Tribunal or before other authority on the ground that the Vice-Chairman or such officer was not competent to exercise such disciplinary power or take such action.

STATEMENT OF OBJECTS AND REASONS

The Delhi Development Authority was set up under the Delhi Development Act, 1957. The conduct of its officers and employees is governed by the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 framed under section 57 of the Act. Under these Regulations, the Vice-Chairman, Delhi Development Authority had been given authority to impose the penalty of censure or withholding of increment or promotion on Group B officers and all penalties on Group C and D officers. Similarly, the Engineer Member and the Finance Member have been given the authority to impose all penalties on Group C and D officers. However, the Authority acting under sub-section (1) of section 52 of the Act delegated its powers for imposition of certain penalties to the Chairman, Vice-Chairman and other officers of Delhi Development Authority *vide* Notification dated 22.11.1979. In pursuance of this Notification, the Vice-Chairman and other officers of Delhi Development Authority had acted and functioned as the Disciplinary Authority and imposed major and minor penalties on Group A and B officers.

2. In CWP No. 2402/91 titled as R.P. Sharma *vs.* Delhi Development Authority, the Hon'ble High Court of Delhi, *vide* its judgement dated 23.9.1993 has held that the Notification dated 22.11.1979 issued under sub-section (1) of section 52 of the Delhi Development Act has no effect as the Regulations of 1961 could be amended by the Authority only with the previous approval of the Central Government in accordance with the provisions of section 57 of the Delhi Development Act, 1957. In pursuance of the judgement of the High Court, the Regulations of 1961 have since been amended by Delhi Development Authority and notified *vide* Notification dated 1.3.1994.

3. An anomalous situation has arisen in respect of the decisions taken by Vice-Chairman and other officers in disciplinary proceedings against Group A and B officers during the period December, 1979 to February, 1994 due to the decision of the High Court of Delhi. Many court cases are still pending on the said issue and it is anticipated that these may be decided against the Delhi Development Authority on the analogy of the case of Shri R.P. Sharma. In addition to the pending litigations, the Delhi Development Authority is receiving representations from officers against whom penalties were imposed. The Delhi Development Authority has to entertain all these requests and will have to reopen all the cases in view of the High Court's orders. The re-opening of all such cases decided between 22.11.1979 and 1.3.1994 will not only create enormous administrative problems and financial implications for Delhi Development Authority, but will also result in a large number of cases getting delayed for years together. In order to overcome this problem it has become necessary to validate the disciplinary powers exercised and action taken by Vice-Chairman, and other officers of Delhi Development Authority during the period between 22.11.1979 to 1.3.1994 (both days inclusive) by way of legislation.

4. The Bill seeks to achieve the aforesaid object.

U. VENKATESWARLU

II

BILL NO. L OF 1997

A Bill further to amend the Code of Civil Procedure, 1908, *the Limitation Act,* 1963 *and the Court Fees Act,* 1870.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Code of Civil Procedure (Amendment) Act, 1997.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof.

CHAPTER II

AMENDMENT OF SECTIONS

5 of 1908.

Amendment of section 26.

2. In the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), existing section 26 shall be re-numbered as sub-section (1), and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:--

"(2) In every plaint, facts shall be proved by affidavit.".

Amendment of section 27.

3. In section 27 of the principal Act, the following words shall be inserted at the end, namely:--

"on such day not beyond thirty days from date of the institution of the suit".

Amendment of section 32.

4. In section 32 of the principal Act, in clause (c), for the words "not exceeding five hundred rupees", the words "not exceeding five thousand rupees" shall be substituted.

Amendment of section 58.

5. In section 58 of the principal Act,—

(*i*) in sub-section (*1*),--

(*a*) in clause (*a*), for the words "one thousand rupees", the words "five thousand rupees" shall be substituted;

(*b*) for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks:";

(*ii*) in sub-section (*1A*), for the words "five hundred rupees", the words "two thousand rupees" shall be substituted.

Amendment of section 60.

6. In section 60 of the principal Act, in the first proviso to sub-section (*1*), in clause (*i*), for the words "for hundred rupees", the words "one thousand rupees" shall be substituted.

Insertion of new section 89.

7. In the principal Act, after section 88, the following section shall be inserted, namely:—

Settlement of disputes outside the Court.

"89. (*1*) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for—

(*a*) arbitration;

(*b*) conciliation;

(*c*) judicial settlement including settlement through Lok Adalat; or

(*d*) mediation.

(2) Where a dispute has been referred—

(*a*) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

26 of 1996.

(*b*) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (*1*) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

39 of 1987.

(*c*) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act; 39 of 1987.

(*d*) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.".

Amendment of section 95.

8. In section 95 of the principal Act, in sub-section (*1*), for the words "not exceeding one thousand rupees", the words "not exceeding fifty thousand rupees" shall be substituted.

Amendment of section 96.

9. In section 96 of the principal Act, in sub-section (*4*), for the words "three thousand rupees", the words "twenty-five thousand rupees" shall be substituted.

Substitution of new section for section 100A.

10. For section 100 A of the principal Act, the following section shall be substituted, namely:—

No further appeal in certain cases.

"100A. Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force,--

(*a*) where any appeal from an original or appellate decree or order is heard and decided,

(*b*) where any writ, direction or order is issued or made on an application under article 226 or article 227 of the Constitution,

by a single Judge of a High Court, no further appeal shall lie from the judgement, decision or order of such Single Judge."

Substitution of new section for section 102.

11. For section 102 of the principal Act, the following section shall be substituted, namely:—

No second appeal in certain cases.

"102. No second appeal shall lie from any decree, when the amount or value of the subject-matter of the original suit does not exceed twenty-five thousand rupees.".

Amendment of section 115.

12. In section 115 of the principal Act, in sub-section (*1*)—

(*i*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.";

(*ii*) after sub-section (*2*), but before the Explanation, the following sub-section shall be inserted, namely:—

"(*3*) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.".

Amendment of section 148.

13. In section 148 of the principal Act, after the words "such period", the words "not exceeding thirty days in total," shall be inserted.

CHAPTER III

AMENDMENT OF ORDERS

Amendment of Order IV.

14. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order IV, in rule 1,—

(*i*) in sub-rule (*1*), for the words "plaint to the Court", the words "plaint in duplicate to the Court" shall be substituted;

(*ii*) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (*1*) and (*2*).".

Amendment of Order V.

15. In the First Schedule, in Order V,—

(*i*) in rule 1, for sub-rule (*1*), the following shall be substituted, namely:—

"(*1*) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the day of institution of the suit as may be specified therein:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement on the said day, he shall be allowed to file the same on such other day which shall not be beyond thirty days from the date of service of summons on the defendant, as the court may think fit.";

(*ii*) for rule 2, the following shall be substituted, namely:—

Copy of plaint annexed to summons.

"2. Every summon shall be accompanied by a copy of the plaint.";

(*iii*) in rule 6, for the words "for the appearance of the defendant", the words, brackets and figures "under sub-rule (1) of rule 1" shall be substituted;

(*iv*) in rule 7, for the words "all documents", the words, figure and letters "all documents or copies thereof specified in rule 1A of Order VIII" shall be substituted;

(*v*) for rule 9, the following rules shall be substituted, namely:—

Delivery of summons to the plaintiff or his agent.

"9. (*1*) The court shall issue summons and deliver the same to the plaintiff or his agent, for service, and direct the summons to be served by registered post acknowledgment due or by speed post or by such courier service as may be approved by the High Court or by fax message or by Electronic Mail Service or by such other means as the High Court may prescribe by rules, addressed to the defendant to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain.

(*2*) The plaintiff or his agent shall send the summons by any means as directed by the court under sub-rule (*1*) within two days from the delivery of summons to the plaintiff by the court under that sub-rule.

(*3*) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent received by the court or postal article containing the summons is received back by the court with an endorsement purporting to have been made by a postal employee or by any authorised person to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or refused to accept the summons by any other means specified in sub-rule (*1*), when tendered or transmitted to him the court issuing the summon shall declare that the summons had been duly served on the defendant :

Provided that summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or misled or for any other reasons has not been received by the court on the date fixed by it.

Simultaneous issue of summons for service by the court controlled process.

9A. (*1*) The court may, in addition to, and simultaneously with the delivery of summons for service to the plaintiff as provided in the manner provided in rule 9, may also direct that summons to be served on the defendant or his agent empowered to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain.

(*2*) The summons shall, unless the court otherwise direct, be delivered or sent to the proper officer in such manner as may be prescribed by the High Court to be served by him or one of his subordinates.

(*3*) The proper officer may be an officer of the court other than that in which the suit is instituted, and where he is such an officer, the summon may be sent to him in such manner as the court may direct.

(*4*) The proper officer may serve the summons by registered post acknowledgment due, by speed post, by such courier service as may be approved by the High Court, by fax message, by Electronic Mail service or by such other means as may be provided by the rules made by the High Court.";

(*vi*) rule 19A shall be omitted;

(*vii*) in rule 21, for the words "or by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(*viii*) in rule 24, for the words "by post or otherwise", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may by provided by the rules made by the High Court" shall be substituted;

(*ix*) in rule 25, for the words "by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted.

Amendment of Order VI.

16. In the First Schedule, in Order VI,—

(*i*) rule 5 shall be omitted;

(*ii*) in rule 15, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.";

(*iii*) rules 17 and 18 shall be omitted.

Amendment of Order VII.

17. In the First Schedule, in Order VII,—

(*i*) for rule 9, the following rule shall be substituted, namely:—

Procedure on admitting plaint.

"9. (*1*) Where the plaint is admitted, the court shall give to the plaintiff summons in the name of all the defendants to be served upon or get served in the manner provided under Order V.

(*2*) Within two days of the receipt of summons under sub-rule (*1*), the plaintiff shall send or cause to send the summons to the defendants alongwith the copy of the plaint in the manner provided under Order V.

(*3*) Where the court orders that the summons be served on the defendants in the manner provided in rule 9A of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within two days

from the date of such order alongwith requisite fee for service of summons on the defendants.".

(*ii*) in rule 11, after sub-clause (*d*), the following sub-clauses shall be inserted, namely:—

"(*e*) where it is not filed in duplicate;

(*f*) where the plaintiff fails to comply sub-rule (*2*) of rule 9;

(*g*) where the plaintiff fails to comply sub-rule (*3*) of rule 9A.".

(*iii*) for rule 14, the following rule shall be substituted, namely:—

Production of document on which plaintiff sues or relies.

"14. (*1*) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(*2*) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(*3*) Where a document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on behalf of the plaintiff at the hearing of the suit.

(*4*) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.";

(*iv*) rule 15 shall be omitted;

(*v*) in rule 18, in sub-rule (*1*), the words "without the leave of the court" shall be omitted.

Amendment of Order VIII.

18. In the First Schedule, in Order VIII,—

(*i*) for rule 1, the following rule shall be substituted, namely:—

Written statement.

"1. The defendant shall at or before the first hearing or within such time as the court may permit, which shall not be beyond thirty days from the date of service of summons on the defendant, present a written statement of his defence.";

(*ii*) after rule 1 so inserted, the following rule shall be inserted, namely:—

Duty of defendant to produce documents upon which relief is claimed or relied upon by him.

"1A. (*1*) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(*2*) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(*3*) Where a document or a copy thereof is not filed with the written statement under this rule, it shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit.

(*4*) Nothing in this rule shall apply to documents—

(*a*) produced for the cross-examination of the plaintiff's witnesses, or

(*b*) handed over to a witness merely to refresh his memory";

(*iii*) rules 8A, 9 and 10 shall be omitted.

Amendment of Order IX.

19. In the First Schedule, in Order IX,—

(*i*) for rule 2, the following rule shall be substituted, namely:—

Dismissal of suit where summons not served by the plaintiff or his agent or in consequences of failure to pay cost.

"2. Where on the day so fixed it is found that the summons has not been sent within stipulated period of two days, to the defendant by the plaintiff or his agent or in consequence of their failure to pay the court-fee or any charges, if any chargeable for such service, the court shall make an order that the suit be dismissed:

Provided that no such order shall be made if, notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.";

(*ii*) in rule 5, for the words "one month", the words "seven days" shall be substituted.

Amendment of Order X.

20. In the First Schedule, in Order X,—

(*i*) after rule 1, the following rules shall be inserted, namely:—

Direction of the court to opt for any one mode of alternative dispute resolution.

"1A. After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

Appearance before the conciliatory forum or authority.

1B. Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

Appearance before the court consequent to the failure of efforts of conciliation.

1C. Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.";

(*ii*) in rule 4, in sub-rule (*1*), for the words "may postpone the hearing of the suit to a future day", the words "may postpone the hearing of the suit to a day not later than seven days from the date of first hearing" shall be substituted.

Amendment of Order XI.

21. In the First Schedule, in Order XI,—

(*i*) in rule 2, after the words "submitted to the court", the words "and that court shall decide within seven days from the day of filing of the said application," shall be inserted;

(*ii*) in rule 15, for the words "at any time", the words "at or before the settlement of issues" shall be substituted.

Amendment of Order XII.

22. In the First Schedule, in Order XII,—

(*i*) in rule 2, for the word "fifteen", the word "seven" shall be substituted;

(*ii*) in rule 4, second proviso shall be omitted.

Amendment of Order XIII.

23. In the First Schedule, in Order XIII, for rules 1 and 2, the following rule shall be substituted, namely:—

Original documents to be produced at or before the settlement of issues.

"1. (*1*) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(*3*) Nothing in sub-rule (*1*) shall apply to documents—

(*a*) produced for the cross-examination of the witnesses of the other party; or

(*b*) handed over to a witness merely to refresh his memory.".

Amendment of Order XIV.

24. In the First Schedule, in Order XIV,—

(*i*) in rule 4, for the words "may adjourn the framing of the issues to a future day", the words "may adjourn the framing of issues to a day not later than seven days" shall be substituted.

(*ii*) rule 5 shall be omitted.

Amendment of Order XVI.

25. In the First Schedule, in Order XVI,—

(*i*) in rule 1, in sub-rule (*4*), for the words "court in this behalf", occurring at the end, the words, brackets and figure "court in this behalf within five days of presenting the list of witnesses under sub-rule (*1*)" shall be substituted;

(*ii*) in rule 2, in sub-rule (*1*), after the words "within a period to be fixed", the words, brackets and figures "which shall not be later than seven days from the date of making application under sub-rule (*4*) of rule 1" shall be inserted.

Amendment of Order XVII.

26. In the First Schedule, in Order XVII, in rule 1,—

(*i*) for sub-rule (*1*), the following shall be substituted, namely:—

"(*1*) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.";

(*ii*) in sub-rule (*2*), for the words "may make such order as it thinks fit with respect to the costs occassioned by the adjournment", the words "shall make such orders as to costs occassioned by the adjournment or such higher costs as the court deems fit" shall be substituted.

Amendment of Order XVIII.

27. In the First Schedule, in Order XVIII,—

(*i*) sub-rule (4) of rule 2 shall be omitted;

(*ii*) for rule 4, the following rule shall be substituted, namely:—

Recording of evidence by commissioner.

"4. (*1*) In every case, the evidence of a witness of his examination-in-chief shall be given by affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

(*2*) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the court shall be taken orally by a commissioner to be appointed by the court from amongst the panel of commissioners prepared for this purpose on the same day:

Provided that, in the interest of justice and for reasons to be recorded in writing, the court may direct that the evidence of any witness shall be recorded by the court in the presence and under the personal direction and superintendence of the judge.

(*3*) The commissioner shall be paid such sum for recording of evidence as may be prescribed by the High Court.

(*4*) The amount payable to the commissioner under sub-rule (*3*) shall be paid by the Court or by the parties summoning the witness as may be prescribed by the High Court.

(*5*) The District Judge shall prepare a panel of commissioners to record the evidence under this rule.

(*6*) The commissioner shall record evidence either in writing or mechanically in his presence and shall make a memorandum which shall be signed by him and the witnesses and submit the same to the court appointing such commissioner.

(*7*) Where any question put to a witness is objected by a party or his pleader and the commissioner allows the same to be put, the commissioner shall take down the question together with his decision.";

(*iii*) rule 17A shall be omitted;

(*iv*) after rule 18, the following rule shall be inserted, namely:—

Power to get statements recorded on commission.

"19. Notwithstanding anything contained in these rules, the court may, instead of examination witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI.".

Amendment of Order XX.

28. In the First Schedule, in Order XX,—

(*i*) in rule 1, in sub-rule (*2*), the words "but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced" shall be omitted;

(*ii*) for rules 6A and 6B, the following rules shall be substituted, namely:—

Preparation of decree.

"6A. (*1*) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(*2*) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

Copies of judgements when to be made available.

6B. Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.".

Amendment of Order XXVI.

29. In the First Schedule, in Order XXVI, after rule 4, the following rule shall be inserted, namely:—

Commission for examination of any person resident within the local limits of the jurisdiction of the court.

"4A. Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.

Amendment of Order XXXIX.

30. In the First Schedule, in Order XXXIX, rule 1 shall be renumbered as sub-rule (*1*) of that rule and after sub-rule (*1*) as so renumbered, the following sub-rule shall be inserted, namely:—

"(2) The court shall, while granting a temporary injunction to restrain such act or to make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property under disposition in the suit under sub-rule (1), direct the plaintiff to give security, or otherwise as the court thinks fit.".

Insertion of new Order XXXIXA.

31. In the First Schedule, after Order XXXIX, the following Order shall be inserted, namely:—

"ORDER XXXIXA

INSPECTION BEFORE INSTITUTION OF SUIT

Filing of application for inspection by legal representative.

1. In a case where a person competent to file a suit for grant of relief is not available to file such a suit for injunction, the legal representative of that person may make an application to the competent court of jurisdiction for the appointment of a commission to make local investigation of the property for the purpose of elucidating any matter in dispute and such commission shall be deemed to be appointed under Order XXVI.

Filing of the suit.

2. Within seven days from the date of the filing of the application under rule 1, the person competent to file suit, shall file the suit.".

Amendment of Order XLI.

32. In the First Schedule, in Order XLI,—

(*i*) in sub-rule (*1*) of rule 1, for the words and brackets "decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded", the word "judgment" shall be substituted;

(*ii*) for rule 9, the following rule shall be substituted, namely:—

Registry of memorandum of appeal.

"9. (*1*) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.";

(*iii*) in rule 11, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.";

(*iv*) in rule 12, for sub-rule (2), the following sub-rule shall be substituted, namely:—

"(2) Such day shall be fixed with reference to the current business of the court.";

(*v*) rules 13, 15 and 18 shall be omitted;

(*vi*) in rule 19, the words and figures "or rule 18" shall be omitted;

(*vii*) in rule 22, sub-rule (*3*) shall be omitted.

CHAPTER IV

REPEAL AND SAVINGS

Repeal and savings.

33. (*1*) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,— 10 of 1897.

(a) the provisions of section 26 of the principal Act and of Order IV of the First Schedule, as amended by sections 2 and 14 of this Act, shall not apply to or affect any suit pending immediately before the commencement of sections 2 and 14; and every such suit shall be tried as if sections 2 and 14 had not come into force;

(b) the provisions of section 27 of the principal Act, as amended by section 3 of this Act, shall not apply to or affect any suit pending immediately before the commencement of section 3 and every such suit shall be tried as if section 3 had not come into force;

(c) the provisions of section 58 of the principal Act, as amended by section 5 of this Act, shall not apply to or affect any person detained in the civil prison in-execution of a decree before the commencement of section 5;

(d) the provisions of section 60 of the principal Act, as amended by section 6 of this Act, shall not exempt salary from attachment to the extent mentioned in clause (i) of the first proviso to sub-section (1) of section 60 before the commencement of section 6;

(e) section 89 and rules 1A, 1B and 1C of Order X of the First Schedule, as inserted in the principal Act by sections 7 and 20 of this Act, shall not affect any suit in which issues have been settled before the commencement of section 7; and every such suit shall be dealt with as if sections 7 and 20 had not come into force;

(f) the provisions of section 96 of the principal Act, as amended by section 9 of this Act, shall not apply to or affect any appeal from original decree which had been admitted before the commencement of section 9; and every admitted appeal shall be dealt with as if section 9 had not come into force;

(g) the provisions of section 100A of the principal Act, as substituted by section 10 of this Act, shall not apply to or affect any appeal against the decision of a Single Judge of a High Court under article 226 or article 227 of the Constitution which had been admitted before the commencement of section 10; and every such admitted appeal shall be disposed of as if section 10 had not come into force;

(h) the provisions of section 102 of the principal Act, as substituted by section 11 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 11; and every such appeal shall be disposed of as if section 11 had not come into force;

(i) the provisions of section 115 of the principal Act, as amended by section 12 of this Act, shall not apply to or affect any proceeding for revision which had been finally disposed of;

(j) the provisions of rules 1, 2, 6, 7, 9, 9A, 19A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may be, inserted or omitted by section 15 of this Act shall not apply to any summons issued immediately before the commencement of section 15;

(k) the provisions of rules 9, 11, 14, 15 and 18 of Order VII of the First Schedule, as amended or, as the case may be, substituted or amended by section 17 of this Act, shall not apply to in respect of any proceedings pending before the commencement of section 17;

(l) the provisions of rules 1 and 1A of Order VIII of the First Schedule, as substituted or inserted by section 18 of this Act, shall not apply to a written statement filed and presented before the court immediately before the commencement of section 18;

(*m*) the provisions of rules 2 and 5 of Order IX of the First Schedule, as amended by section 19 of this Act, shall not apply in respect of summons issued before the commencement of section 19;

(*n*) the provisions of rules 2 and 15 of Order XI of the First Schedule, as amended by section 21 of this Act, shall not apply to or affect any order passed by the court or any application submitted for inspection to the court before the commencement of section 21 of this Act;

(*o*) the provisions of rules 2 and 4 of Order XII of the First Schedule, as amended and omitted, as the case may be, by section 22 of this Act, shall not affect any notice given by the party or any order made by the court before the commencement of section 22 of this Act;

(*p*) the provisions of rules 1 and 2 of Order XIII of the First Schedule, as substituted by section 23 of this Act, shall not affect the documents produced by the parties or ordered by the court to be produced before the commencement of section 23 of this Act;

(*q*) the provisions of rules 4 and 5 of Order XIV of the First Schedule, as amended and omitted by section 24 of this Act, shall not affect any order made by the court adjourning the framing of the issues and amending and striking out issues before the commencement of section 24 of this Act;

(*r*) the provisions of rules 1 and 2 of Order XVI of the First Schedule, as amended by section 25 of this Act, shall not affect any application made for summoning of witnesses and time granted to a party to deposit amount for summoning witnesses made by the court before the commencement of section 25;

(*s*) the provisions of rule 1 of Order XVII of the First Schedule, as amended by section 25 of this Act, shall not affect any adjournment granted by the court and any cost occasioned by the adjournment granted by the court before the commencement of section 25 and the number of adjournments granted earlier shall not be counted for such purpose;

(*t*) the provisions of rules 1, 6A and 6B of Order XX of the First Schedule, as amended and substituted by section 28 of this Act, shall not affect any application for obtaining copy of decree for filing of appeal made by a party and any appeal filed before the commencement of section 28 of this Act; and every application made and every appeal filed before the commencement of section 28 shall be dealt with as if section 28 had not come into force;

(*u*) in sub-rule (2) of rule 1 of Order XXXIX of the First Schedule, as inserted by section 30 of this Act, shall not affect any temporary injunction granted before the commencement of section 30 of this Act;

(*v*) the provisions of rules 1, 9, 11, 12, 13, 15, 18, 19 and 22 of Order XLI of the First Schedule, as amended, substituted and omitted, as the case may be, by clause 32 of the Bill shall not affect any appeal filed before the commencement of section 32; and every appeal pending before the commencement of section 32 shall be disposed of as if section 32 of this Bill had not come into force.

CHAPTER V

AMENDMENT OF THE LIMITATION ACT, 1963

36 of 1963.

34. In the Limitation Act, 1963, in section 12, in sub-section (*3*), the words "on which the decree or order is founded" at the end shall be omitted. Amendment of section 12.

CHAPTER VI

AMENDMENT OF THE THE COURT FEES' ACT, 1870

Insertion of new section 16.

35. In the Court Fees' Act, 1870 (hereafter in this Chapter referred to as the Court Fees' Act), after section 15, the following section shall be inserted, namely:— 7 of 1870.

Refund of Fee.

"16. Where the court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 the plaintiff shall be entitled to a certificate from the court authorising him to receive back from the collector, the full amount of the fee paid in respect of such plaint.". 5 of 1908.

Amendment of the Second Schedule.

36. In the Court Fees' Act, in the Second Schedule, after serial number 1A and entries relating thereto, the following serial number and entries thereof shall be inserted, namely:—

"1B.	Application to any Civil Court for local inspection under Order XXXIXA of the Code of Civil Procedure, 1908.".	When presented to Civil Court	Rs. 50/-

5 of 1908.

STATEMENT OF OBJECTS AND REASONS

The law relating to the procedure in suites and civil proceedings in India (except those in the State of Jammu and Kashmir and Nagaland and Tribal Areas of Assam and certain other areas) is contained in the Code of Civil Procedure, 1908. The Code has been amended from time to time by various Acts of Central and State Legislatures. The Code is mainly divided into two parts, namely, Sections and Orders. While the main principles are contained in the Sections, the detailed procedures with regards to the matters dealt with by the Sections are specified in the Orders. Under section 122, the High Courts have powers to amend, by rules, the procedure laid down in the Orders. In exercise of these powers, various amendments have been made in the Orders by the different High Courts.

2. In terms of the Common Minimum Programme of the United Front Government, it was envisaged that a Bill on judicial reforms and disposal of pending cases within a period of three years may be introduced in the Parliament. With a view to keep the commitment given to the people of India so that a speedy disposal of cases may take place within the fixed time frame and with a view to implement the report of Justice V.S. Malimath, it was thought necessary to obtain the views of the State Governments on the subject also. In the Law Minister's Conference held in New Delhi on 30th June and 1st July, 1997, the working paper on the proposed amendments to the Code of Civil Procedure, 1908 was discussed. On the basis of resolution adopted in the said Conference and with a view to implement the recommendations of Justice Malimath Committee, 129th Report of the Law Commission of India and the recommendations of the Committee on Subordinate Legislations (11th Lok Sabha), it is proposed to introduce a Bill for the amendments of Code of Civil Procedure, 1908 keeping in view, among others, that every effort should be made to expedite the disposal of civil suits and proceedings so that justice may not be delayed.

3. Some of the more important changes proposed to be made are as follows:—

(a) any plaint to be filed shall be in duplicate and shall be accompanied by all the documents on which the plaintiff relies upon in support of his claim. It is also to be supported by an affidavit stating the genuineness of the claim of the plaintiff and of the documents on which he relies upon;

(b) the written statement in duplicate shall be accompanied by all the documents and shall be filed within a period of thirty days from the date of service of summons. Written statement is also to be supported by an affidavit;

(c) in order to obviate delay in service of summons, it is proposed that plaintiff shall take the summons from the court and send it to the parties, within two days of the receipt thereof, bypost, fax, e-mail, speed post, courier service or by such other means as may be directed by the court;

(d) with a view to implement the 129th Report of the Law Commission of India and to make conciliation scheme effective, it is proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. It is only after the parties fail to get their disputes settled through any one of the alternate dispute resolution methods that the suit shall proceed further in the court in which it was filed;

(e) as the maximum time is consumed in recording oral evidence by the courts which causes delay in disposal of cases, it is proposed to reduce such delay by making provisions for filing of examination-in-chief of every witness in the form of an affidavit. For the cross-examination and re-examination of witnesses it is proposed that it shall be

recorded by a commissioner to be appointed by the court and the evidence recorded by a commissioner shall become part of the record of the suit;

(f) with a view to implement the recommendations of the Committee on Subordinate Legislations (11th Lok Sabha) relating to steps to reduce unnecessary adjournments, it is proposed to make it obligatory for a judge to record reasons for adjournment of a case as well as award of actual or higher cost and not merely national cost against the parties seeking adjournment in favour of the opposite party. Further, it is proposed to limit the number of adjournments to three only during the hearing of a case;

(g) as the party in whose favour an injunction has been granted usually causes delay on filimsy and unreasonable grounds, it is proposed that the party who applies for injunction shall also furnish security so that that party may not adopt delaying tactics during the trial of the case;

(h) in matters relating to property disputes, particularly in matter of unauthorised construction on the land of others, it has been found that, under the existing provisions of the Code of Civil Procedure, no application for injunction can be moved unless the suit is filed first in the court having competent jurisdiction. With a view to obviate this hardship, it is proposed that a person may make an application to the court of a competent jurisdiction for appointment of commission to ascertain the factual status of the property so that at the time of the filing of the regular suit the report is available to the commissioner relating to the factual status of the property in dispute;

(i) with a view to implement the recommendations of Justice V.S. Malimath Committee, it is proposed that no further appeal against the judgment of a single judge shall lie even in a petition under article 226 or 227 of the Constitution; and

(j) with a view to reduce delay, it is proposed that the court shall on the date of pronouncement of judgment simultaneously provide authenticated copies of the judgment to the parties. Appeal shall be filed in the court which passes the decree and notice shall be served on the advocates of the parties in the court of first instance.

3. The Bill seeks to achieve the above objects.

RAMAKANT D. KHALAP.

Notes on clauses

Clause 2.— In section 26 of the Code, a suit is instituted by presentation of a plaint or in such other manner as may be prescribed by rules made by high Court. Since these rules are different with different High Courts, the requirements for institution of suit are not uniform. The rules made by some High Courts require plaint to be supported by an affidavit stating the genuineness of the claim of the plaintiff and of the documents on which he relies upon while no such affidavit is required under the rules made by some High Courts. With a view to bring uniformity and lay down simple procedure to complete the pleadings, clause 2 amends section 26 of the Code and provides that facts must be proved by affidavit in every plaint.

Clause 3 amends section 27 of the Code with a view to lay down a fixed time frame to send summons to defendants. It seeks to provide 30 days from the institution of suit within which summons should be sent to defendants.

Clause 4.— In clause (c) of section 32 of the Code, the court is empowered to impose a fine not exceeding five hundred rupees for the purpose of compelling the attendance of any person in the court. Clause 4 substitutes "five thousand rupees" in place of "five hundred ruppees" in the said section for the reason of decrease in the money value since the time provision was made.

Clause 5.— Section 58 of the Code provides for the detention and release of a person from civil prison in execution of a decree. Since the time provisions of section 58 were made, the value of money has decreased considerably. In this view, clause 5 seeks to amend section 58 and it substitutes for the words "one thousand rupees" and "five hundred rupees" the words "five thousand rupees" and "two thousand rupees" respectively.

Clause 6.— Section 60 of the Code provides for attachment and sale of properties in execution of a decree. Clause 6 seeks to amend section 60 by substituting "one thousand rupees" in place of "four hundred rupees" for the reason of decrease in the money value since the time provisions were made.

Clause 7 provides for the settlement of disputes outside the court. The provisions of clause 7 are based on the recommendations made by Law Commission of India and Malimath Committee. It was suggested by Law Commission of India that the Court may require attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of dispute between the parties and make an attempt to settle the dispute between the parties amicably. Malimath Committee recommended to make it obligatory for the court to refer the dispute, after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. It is only when the parties fail to get their disputes settled through any of the alternate dispute resolution method that the suit could proceed further. In view of the above, clause 7 seeks to insert a new section 89 in the Code in order to provide for alternate dispute resolution.

Clause 8.— In section 95 of the Code, the court may award compensation not exceeding one thousand rupees in case it appears to the court that an arrest, attachment or injunction has been effected and such arrest, attachment or injunction was applied for insufficient ground or that there was no reasonable ground for instituting the suit. Sub-clause (2) of the said section bars a suit for compensation in respect of such arrest, attachment or injunction if an order has been passed by the court on an application for compensation under sub-section (1). In this circumstance, clause 8 seeks to substitutes "fifty thousand rupees" in place of "one thousand rupees".

Clause 9.— Section 96 of the Code provides for an appeal from original decree. Since the time provisions were made the value of money has considerably decreased and

the pecuniary limits of "three thousand rupees" require to be revised. Clause 9 therefore seeks to substitute "twenty-five thousand rupees" in place of "three thousand rupees" in section 96.

Clause 10.— Justice Malimath Committee examined the issue of further appeal against the judgment of Single Judge exercising even a first appellate jurisdiction. The Committee recommended for suitable amendments to section 100A of the Code with a view to provide that further appeal in this regard shall not lie. The Committee also recommended for suitable enactment by Parliament for abolition of appeal to a Division Bench against the decision and order rendered by a Single Judge of the High Court in a proceeding under articles 226 or 227 of the Constitution. Clause 10 seeks to substitute a new section 100A with a view to provide for no further appeal in the above cases.

Clause 11.—Section 102 of the Code bars record appeal when the amount or value of the subject matter of the suit does not exceed one thousand rupees. Justice Malimath Committee recommended the amendments in section 102 in order to substitute a limit of twenty-five thousand rupees in place of one thousand rupees for the reasons of decrease in the value of money since the time provisions were made. Clause 11 seeks to bring in a limit of twenty-five thousand rupees to bar record appeal.

Clause 12.—Section 115 of the Code provides for revision by the High Court of an order or decision of any court subordinate to such High Court. The Malimath Committee noticed that often the records of the lower courts are sent to the High Court in the revisional proceedings. It is imperative that records of proceedings pending in the subordinate court should not be sent unless High Court so desires and revision should not operate as stay of proceedings before the trial court. The Committee while agreeing in principle that scope of interference against interlocutory orders should be restricted, felt the object can be acheived more effectively without demanding the High Court of the power of revision. Clause 12 seeks to achieve the above object by suitable amendments to section 115.

Clause 13.—Section 148 of the Code provides for enlargement of time by the court. Where any period is fixed or granted by the court for of any act prescribed or allowed by the Code, court has discretion to enlarge such period. Clause 13 seeks to put a limit on enlargement of such period by inserting the words "not exceeding thirty days in total" in section 148 with a view to minimise the procedural delay at the instance of either party to a suit.

Clause 14.—Order IV of the code provides for the institution of suits. Sub-rule (1) of rule 1 of Order IV states that every suit shall be instituted by presenting a plaint to the court. Since a copy of plaint is sent before court and a duplicate copy of plaint is needed for records, suitable amendments are made in this regard by caluse 14 which requires institution of a suit by presenting plaint in duplicate to the court. Sub-rule (2) of rule 1 of the said order requires compliance of certain formalities by the registry of court. With a view to dispel the doubts when a suit is regarded to have been instituted, clause 14 inserts a new sub-rule (3) to provides that the plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

Clause 15.—Order V of the Code provides for issue and service of summons. The Malimath Committee looked into the problem of arrears of cases in the courts and recommended amendments to the Code with a view to lay down a fixed time frame within which pleadings are to be completed. Clause 15 seeks to substitute sub-rule (1) of rule 1 of Order V to provide for filing written statements within thirty days from the day of institution of the suit except in few situations. Clause 15 amends rules 2, 6 and 7 to ensure that copy of plaint alongwith all documents on which plaintiff relies upon are delivered with summons to the defendant. This clause substitutes rule 9 to provide for delivery of summons by speed post, courier service, fax message or by electronic mail, service as the High Court may prescribe by rules. It makes the Code up-to-date with the changing needs of the time.

Clause 16.—Order VI of the code provides for pleadings generally. Clause 16 seeks to provide that person verifying the pleading shall furnish an affidavit in support of his pleadings. This cluase omits rules 5, 17 and 18 of Order VI to bring in consistency with new changes in the Code.

Clause 17.—In Order VII of the Code, rule 14 provides for production of documents on which plaintiff sues. Clause 17 seeks to substitute rule 14 to provide where a plaintiff sues upon a document in his possession, he shall enter such documents in a list and shall produce it in court when plaint is presented by him and shall deliver document and a copy thereof to be filed with the plaint. The new rule further provides in case a document or copy thereof is not filed with the plaint, it shall not be allowed to be received in evidence on behalf of plaintiff at the hearing of the suit.

Clause 18.—Order VIII of the Code provides for written statement and set-off. Clause 18 seeks to substitute rule 1 of Order VIII to provide a fixed time frame within which pleadings are to be completed. The new provisions required the defendant to present a written statement within thirty days from the date of service of summons on the defendant. Clause 18 inserts rule 1A to provide it a duty of defendant to produce documents upon which relief is claimed or relied upon by him. Rule 1A requires the defendant to produce documents in his possession in the court and deliver the document and a copy thereof when the written statement is presented by him. Rule 1A further requires in case a document or copy thereof is not filed with the written statement, it shall not be allowed to be received in evidence on behalf of defendant at the hearing of the suit.

Clause 19.—Rule 2 of Order IX is being substituted so as to provide that where there is default on the part of plaintiff to deliver summons to the defendant, the suit shall be dismissed by the court. This is in addition to non-payment of cost by the plaintiff as a ground of dismissal of suit.

It is proposed by amending rule 5 of Order IX so as to reduce the period from one month to seven days within which the plaintiff is required to apply for fresh summons where summons earlier issued remain unserved.

Clause 20.—Order X is proposed to be amended by inserting rules 1A, 1B and 1C in the said order. This amendment is consequential to the insertion of new section 89 vide clause 7 of the Bill.

Clause 21.—Rules 2 and 15 of Order XI are proposed to be amended by fixing time limit to decide an application for leave to deliver interrogatories and to provide that an application for inspection of documents by the parties can be made only before the settlement of issues.

Clause 22.—Rule 2 of Order XII is proposed to be amended for reducing the time from fifteen days to seven days within which notice to admit a document may be given by any party to the suit.

Further the second proviso to rule 4 of the said order is being omitted so as to curtail the discretion of the court in the matter of allowing any party to amend or withdraw admission made by him.

Clause 23.—Rules 1 and 2 of Order XIII are proposed to be substituted so as to provide that the original of documents of which copies have been filed with the plaint and written statement shall be submitted before the settlement of issues is made by the court.

Clause 24.—Rule 4 of Order XIV is proposed to be amended so as to restrict the discretion of court by fixing time limit beyond which no adjournment for the examination of witnesses or of the document shall be granted by the Court before framing of issues by the Court.

It is also proposed to omit rule 5 so that issues are framed within time and no application for amendments and striking out the issue is entertained by the Court.

Clause 25.—Order XVI is proposed to be amended so as to fix a time limit within which an application may be made for summoning of witness. Further it is proposed to provide that a party applying for summons shall pay fee towards calling the summons within a period not later than seven days from the date of making application.

Clause 26.—Order XVII lays down the procedure for granting adjournments. The Committee on Subordinate Legislation (Eleventh Lok Sabha) recommended that it should be made obligatory in the judgment to record reasons for adjournment of cases as well as award of actual and not merely notional cost against the party seeking adjournment in favour of the opposite party. It is proposed to make it obligatory for the judges to record the reasons in writing where the court grants adjournment and to award the actual cost to the opposite party. Further limit up to three adjournments has also been fixed in a case.

Clause 27.—Order XVIII provides for manner of recording the evidence. It is proposed to confer the power of recording of evidence by the commissoner to be appointed by the Court.

Clause 28.—Order XX makes it compulsory for a party filing appeal to annex the certified copy of the decree to the Memorandum of Appeal. Justice Malimath Committee has pointed out that it takes a long time for obtaining certified copy of the decree and thus filing of appeal takes a long time. It is proposed to dispense with annexing certified copy of the decree alongwith Memorandum of Appeal and it is also proposed that the whole judgment shall be made available to the parties immediately after the judgment pronounced.

Clause 29.—Order XXVI enables the court to issue commission only in cases where witness resides outside the local limits of the jurisdiction of the court. It is proposed to amend Order XXVI by inserting a new rule 4A so as to enable the court to issue commission in any case where the interest of justice so demands.

Clause 30.— It has been observed that after obtaining temporary injunction the party in whose favour injunction has been granted causes delay in disposal of cases on flimsy and unreasonable grounds. To curb this practice it is proposed to amend Order XXXIX so as to provide that the party who applies for obtaining injunction shall also furnish security so that it may not adopt delaying tactics during the trial of the case.

Clause 31 seeks to insert a new Order XXXIXA. Under the existing provisions of the Code of Civil Procedure, 1908 no application for interim injunction can be moved unless the suit is filed first in the court having competent jurisdiction. In matters relating to property disputes particularly it may help a person if such a person can make an application to the court of competent jurisdiction for appointment of a Commission to ascertain the factual status of the property so that at the time of filing of the regular suit the report of the Commissioner is available relating to the factual status of the property.

Clause 32 proposes to amend Order XLI of the First Schedule so as to provide for filing of appeal on the basis of the copy of the judgment, to avoid delay as obtaining copy of decree takes considerable time. Further to avoid delay it is proposed that an appeal may be filed in the same court which passed the judgment and that court shall direct the parties to appear before appellate court.

Clause 33.— By this clause, all amendments to the Code made by the State Legislatures and the High courts before the commencement of the Code of Civil Procedure (Amendment) Act, 1997, are, except to the extent they are consistent with the provisions of this Act, being repealed. The provisions relating to savings are broadly intended to ensure that the amendments made by the sections are broadly intended to ensure that the amendments made by the sections mentioned in sub-section (2) are not taken advantage of in respect of proceedings which are pending at the commencement of the Code of Civil Procedure (Amendment) Act, 1997.

Clause 34.— (Amendment to the Limitation Act, 1963).

Sub-section (3) of section 12 of the Limitation Act, 1963 excludes for limitation purposes the time required for obtaining a copy of judgment on which the decree or order is founded. As it is proposed in clauses 28 and 32 of the Bill that copy of judgment is to be delivered at the time of pronouncement of judgement and that is sufficient for filing of appeal, therefore, amendment of consequential nature are being made under the aforesaid sub-section by omitting the words "on which the decree or order is founded".

Clause 35.— (Amendment to the Court Fees Act, 1870).

The proposed amendment is consequential to the new section 89 in the Code of Civil Procedure, 1908, proposed to be inserted vide clause 7 of the Bill so as to enable the party to claim refund of court-fee in case the matter in dispute is settled outside the court.

Clause 36.— (Amendment to the Schedule to the Court-Fees Act, 1870).

The proposed amendment is consequential to the insertion of new Order XXXIXA in the First Schedule proposed to be inserted vide clause 31 of the Bill. The proposed amendment prescribes fee in these cases where a person applies for inspection before institution of the suit.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause (d) of sub-section (2) of section 89, as sought to be inserted by clause 7 of the Bill, empowers the Government and the High Courts to make rules to be followed in mediation proceedings to effect the compromise between the parties.

Rules 9 and 9A of Order V as sought to be substituted by clause 15 of the Bill, empowers the High Courts to approve the courier service for the purpose of service of summons and also empowers to make rules with regard to other means of service of summons.

Rule 4 of Order SVIII as sought to be substituted by clause 27 of the Bill empowers the High Courts to provide, by rules the sums to be paid to the Commissioner for recording of evidence and the amount payable to the Commissioner by the court or by the parties.

Rule 6B of Order XX as sought to be substituted by clause 28 of the Bill empowers the High Courts to make rules with regard to the charges to be paid by the parties for supply of copy of the judgment.

The matters, in respect of which such orders or rules may be made are matters of detail and may hardly be provided for in the Bill. The delegation of legislative power is, therefore, of a normal character.

S.S. SOHONI,
Secretary-General.

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